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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SHAWN ANTHONY ULIBARRI, Plaintiff and Appellant, v. FARHAD SOLEIMANZADEH, Defendant and Respondent.	B221293 (Los Angeles County Super. Ct. No. SC100089)

APPEAL from a judgment of the Superior Court of Los Angeles County. Linda K. Lefkowitz, Judge. Affirmed.

Pfeiffer Thigpen FitzGibbon & Ziontz and Thomas N. FitzGibbon for Plaintiff and Appellant.

Law Offices of Russell F. Behjatnia and Russell F. Behjatnia for Defendant and Respondent.

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Following a bench trial in a declaratory relief action brought by plaintiff and appellant Shawn Anthony Ulibarri, the trial court ruled that a prior default judgment was not void for lack of proper service. It found the evidence showed that defendant and respondent Farhad Soleimanzadeh had properly served appellant by substitute service pursuant to Code of Civil Procedure section 415.20.[1] We affirm. Service effected at the address appellant provided to Soleimanzadeh's attorney was reasonably calculated to provide notice. Moreover, given that the complaint sought damages in an identified amount and for claims beyond personal injuries, no statement of damages was necessary for entry of the default judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Since 1992, appellant has resided at 843 North Reese Place in Burbank. During 2000 and 2001, he received bills, bank statements and other correspondence at that address. Prior to 1992, he resided at a condominium in Canyon Country for approximately one and one-half years. Prior to that, he resided at 15126 Archwood Street in Van Nuys (Archwood address). After appellant moved from the Archwood address, his stepfather continued to reside there.

Sometime in early 2000, appellant and Soleimanzadeh were involved in an automobile accident at the intersection of Wilshire and Santa Monica Boulevards in Beverly Hills. A police officer arrived at the scene and assisted the parties in exchanging driver's license, insurance and registration information. According to appellant, he and Soleimanzadeh each agreed to handle any economic consequences from the accident independently. A couple of months after the accident, however, appellant received a telephone call from a female at a law office—possibly an attorney—calling on Soleimanzadeh's behalf and requesting information from appellant. When appellant returned a call to the law office at the female's request, Soleimanzadeh's attorney,

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[1] Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

Russell Behjatnia, spoke with him. According to Behjatnia, his office had contacted appellant to obtain a current address for him, as the information Soleimanzadeh received from the police officer showed only a post office box on appellant's driver's license and an insurance policy that was no longer in effect. Behjatnia told appellant that he needed to know a physical address for the purpose of correspondence and service. Appellant provided the Archwood address to Behjatnia.

In July 2000, Soleimanzadeh filed a complaint for property damage and personal injury allegedly resulting from the accident. Soleimanzadeh sought $25,000 in compensatory damages. In February 2001, the trial court set the matter for an order to show cause re: dismissal because no proof of service had been filed. Thereafter, Soleimanzadeh filed a proof of service showing that the process server attempted personal service at the Archwood address five times between February 9 and 18, 2001. During the final attempt, the process server left a copy of the summons and complaint with the occupant, described as "John Doe," a male in his fifties, approximately 5 feet 7 inches tall, 190 pounds, with gray hair. Beyond speaking with appellant, Behjatnia did not conduct any further investigation in order to locate appellant or find a different address for him.

Appellant asserts that he did not receive copies of the summons and complaint. After he failed to file an answer or otherwise make an appearance in the action, the trial court entered default on October 22, 2001. On January 4, 2002, the trial court conducted a default prove-up hearing and thereafter entered a default judgment in the amount of $25,000 plus $243 in costs.

Approximately six years later in March 2008, Soleimanzadeh filed a writ of execution seeking to enforce the default judgment. In June 2008, the parties entered into a stipulation staying enforcement of the writ of execution pending appellant's motion to set aside the default.

Rather than file a motion for relief from default, appellant filed a separate action for declaratory relief. He alleged that he had no knowledge of the prior action, the entry of default or the default judgment; he further alleged that service of process was invalid.

He sought a declaration that service of process was void and invalid such that the court never acquired jurisdiction over him, and that therefore the default and default judgment should be vacated and the prior action dismissed with prejudice. Soleimanzadeh answered, generally denying the allegations and asserting several affirmative defenses.

A court trial took place on October 16, 2009. After taking the matter under submission at the conclusion of the one-day trial, the trial court issued a ruling and statement of decision finding that service was properly effected on appellant via substitute service. The trial court determined that service at the Archwood address was reasonably calculated to provide notice in light of evidence that appellant had provided that address to Behjatnia. The trial court overruled appellant's objections to the statement of decision and denied his prematurely-filed motion to vacate the judgment. Judgment was entered in November 2009 and this appeal followed.

DISCUSSION

Appellant seeks reversal of the judgment on two grounds. First, he contends that the evidence failed to show he was properly served via substitute service and therefore the court never acquired jurisdiction over him. Second, in an argument not raised below, he contends that the default judgment should be set aside because Soleimanzadeh failed to serve a statement of damages. We find no merit to either contention.

I. The Trial Court Properly Determined that Service was Valid.

Through his declaratory relief action, appellant sought to collaterally attack the default judgment on the ground it was void because he was not properly served. (See, e.g., *Sternbeck v. Buck* (1957) 148 Cal.App.2d 829, 831–832 [action in equity may be used to vacate judgment based on insufficient service of summons].) As explained in *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1444, "compliance with the statutory procedures for service of process is essential to establish personal jurisdiction. [Citation.] Thus, a default judgment entered against a defendant who was not served with a summons in the manner prescribed by statute is void."

The threshold issue of whether a judgment is void due to improper service is a question of law we review independently. (*Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, 858; *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495–496.) However, to the extent that appellant challenges any of the trial court's factual findings, we review those findings for substantial evidence, resolving all conflicts in favor of the judgment. (E.g., *Poniktera v. Seiler* (2010) 181 Cal.App.4th 121, 130.) Because it is within the exclusive province of the trial court to determine credibility, we defer to the trial court's assessment of a witness's honesty. (E.g., *Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 823; *Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.)

Here, appellant was served with the complaint by substitute service, the requirements of which are set forth in section 415.20, subdivision (b). According to that provision: "If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, . . . a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left." (§ 415.20, subd. (b).)

The Legislature enacted section 415.20 in 1969 as part of a legislative package to update California law on jurisdiction and service of process. (*Espindola v. Nunez* (1988) 199 Cal.App.3d 1389, 1391.) The drafters of this legislation specified that its provisions "'are to be liberally construed.'" (*Pasadena Medi-Center Associates v. Superior Court* (1973) 9 Cal.3d 773, 778.) "The Supreme Court's admonition to construe the process statutes liberally extends to substituted service as well as to personal service." (*Bein v.*

Brechtel-Jochim Group, Inc. (1992) 6 Cal.App.4th 1387, 1392.) As the *Espindola* court explained, substitute service had been a primary method of service in the federal courts for over 100 years and had been recognized by 43 states other than California, making it "widely regarded as an effective way to give actual notice to a defendant." (*Espindola v. Nunez, supra*, at p. 1393.)

In this case, although the trial court observed that a routine investigation by Soleimanzadeh would have revealed appellant's ownership of a residence in Burbank, the trial court concluded that the substitute service requirements were satisfied by Soleimanzadeh's serving appellant at the address he provided. In its statement of decision, the trial court summarized the evidence showing that service at the Archwood address was reasonably calculated to provide notice to appellant: "Defense counsel [Behjatnia] testified that he decided to contact the Plaintiff personally after obtaining information that the insurance policy number was not valid. Counsel testified that during the course of this conversation he specifically asked plaintiff for his address; plaintiff responded with the Archwood address. He testified that plaintiff told him the address was 15126 Archwood St. Van Nuys." The trial court expressly found Behjatnia's testimony credible.

Relying on this evidence, the trial court ruled: "The United States and California Constitutions do not require, as a substitute for personal service, that the method 'most likely' be utilized to effect service. All that is required is a method reasonably calculated to provide notice. *Greene v. Lindsey* (1982) 456 U.S. 444, 450–451. If such a method is followed, due process is satisfied even if the party to be served does not receive actual notice of the proceedings. See *Evan v. Department of Motor Vehicles* (1994) 21 Cal.App.4th 958, 971. As applied to the instant case, the process server went on more than one occasion to personally serve Mr. Ulibarri at the very address he provided as his dwelling place. Such attempts were sufficient to warrant substitute service. As reasoned in *Espindola v. Nunez* (1988) 199 Cal.App.3d 1389, 1392, service at the 'place which the defendant holds out []as his or her principal residence,' and thus where he would most likely [] receive actual notice, is sufficient. Accordingly, Plaintiff herein cannot rest upon

his erroneous, or even intentionally deceptive statement to defense counsel as a means of defeating the prior judgment."

We find no basis to disturb this conclusion. Substitute service is constitutionally sound if it is reasonably calculated to give the defendant actual notice of the proceedings. (*Bein v. Brechtel-Jochim Group, Inc., supra,* 6 Cal.App.4th at p. 1392.) We agree with the trial court that Soleimanzadeh's efforts were reasonable under the circumstances. "It is crucial that a connection be shown between the address at which substituted service is effectuated and the party alleged to be served." (*Corcoran v. Arouh* (1994) 24 Cal.App.4th 310, 315.) Here, the connection was shown by appellant, himself, who provided the Archwood address to Behjatnia. Further, according to the proof of service, the process server acted with reasonable diligence in attempting to personally serve appellant at the Archwood address five separate times over a nine-day period.[2] (See, e.g., *Espindola v. Nunez, supra,* 199 Cal.App.3d at page 1392 ["'Ordinarily, . . . two or three attempts at personal service at a proper place should fully satisfy the requirement of reasonable diligence and allow substituted service to be made'"]; see also *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1202 [three attempts at personal service on three different days showed reasonable diligence].) Finally, the process server satisfied the statutory requirements by leaving the summons and complaint with an appropriate person and thereafter mailing a copy of the same to the Archwood address.

We find no merit to appellant's contention that the evidence did not support the finding of reasonable diligence. Pointing to his own testimony in which he denied ever having a conversation with Behjatnia or providing him with the Archwood address, appellant asserts that service was not effectuated at a location reasonably designed to provide him with notice. Appellant's argument is nothing more than a request for us to

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2 We summarily reject appellant's argument that the proof of service was improperly admitted into evidence. At trial, appellant's counsel identified the proof of service as an exhibit, questioned appellant about it and did not object to its admission; he only inquired whether it should be the subject of judicial notice. (See *In re Clara B.* (1993) 20 Cal.App.4th 988, 1000 [failure to object to the admission of evidence waives the right to raise the issue on appeal]; see also Evid. Code, § 353, subd. (a).)

reject the trial court's credibility determinations and reweigh the evidence in his favor. It is well settled that "[a]n appellate court has no power to reweigh the evidence, or to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn from the evidence." (*Williams v. Hilb, Rogal & Hobbs Ins. Services of California, Inc.* (2009) 177 Cal.App.4th 624, 643.) That the trial court did not acknowledge appellant's denial of the conversation with Behjatnia is inconsequential, particularly in view of the trial court's statement that it "found counsel's testimony credible in any event." Similarly immaterial is whether Behjatnia asked appellant for a residence address or a mailing address, given that section 415.20, subdivision (b) provides that substitute service may be made by "leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address . . . ."

Nor do we find merit to appellant's alternative argument that, even assuming he provided the Archwood address to Behjatnia, service should have been effected at the post office box provided on his driver's license. He relies on Vehicle Code section 1808.21, subdivision (c), which provides: "Any person providing the department [of motor vehicles] with a mailing address shall declare, under penalty of perjury, that the mailing address is a valid, existing, and accurate mailing address and shall consent to receive service of process pursuant to subdivision (b) of Section 415.20 . . . of the Code of Civil Procedure at the mailing address." But, section 415.20, subdivision (b), expressly provides that substitute service may be made at a "usual mailing address other than a United States Postal Service post office box . . . ."[3] Reconciling these two provisions, we conclude that a driver's license mailing address may be used for service of process when the address is something other than a United State Postal Service post

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[3] There was no evidence that the post office box address on appellant's driver's license was anything other than a United States Postal Service post office box. (See *Hearn v. Howard, supra,* 177 Cal.App.4th at p. 1203 [substitute service may be made at a private post office box].)

office box. But even if these two provisions were not readily reconcilable, we would be guided by the principle that "when there is a conflict between two statutes, and one of them 'directly and narrowly addresse[s]' the subject matter, whereas the other one contains only 'broad, general references' to it, the more specific statute controls. [Citation.]" (*DeJung v. Superior Court* (2008) 169 Cal.App.4th 533, 546.) Thus, the specific prohibition in section 415.20, subdivision (b) controls over the more general reference to service in Vehicle Code section 1808.21, subdivision (c).

As aptly stated in *Pasadena Medi-Center Associates v. Superior Court, supra*, 9 Cal.3d at page 778, """in the last analysis the question of service should be resolved by considering each situation from a practical standpoint. . . ."" As a practical matter, we agree with the trial court that service at an address provided by appellant himself as his usual mailing address was reasonably calculated to provide actual notice to appellant of the summons and complaint.

II. No Statement of Damages was Required.

Though his complaint for declaratory relief did not allege that the default judgment was void for this reason, appellant now argues that the judgment should be set aside because Soleimanzadeh did not file a statement of damages as required by section 425.11.[4] "'The purpose of section 425.11 is to "'give defendants "one last clear chance" to respond to allegations of complaints by providing them with "actual" notice of their exact potential liability.'"' [Citation.]" (*Sakaguchi v. Sakaguchi, supra,* 173 Cal.App.4th at p. 860.)

Here, the complaint alleged that Soleimanzadeh suffered personal injury and property damage, and sought $25,000 in compensatory damages for wage loss, hospital

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[4] In pertinent part, section 425.11 provides: "(b) When a complaint is filed in an action to recover damages for personal injury or wrongful death, the defendant may at any time request a statement setting forth the nature and amount of damages being sought. . . . [¶] (c) If no request is made for the statement referred to in subdivision (a), the plaintiff shall serve the statement on the defendant before a default may be taken."

and medical expenses, property damage, loss of use of property, general damage and loss of earning capacity. At the time it was filed, the complaint further specified that it was being filed in the municipal court, meaning that Soleimanzadeh could not recover more than $25,000 in damages. In view of these circumstances, we are guided by *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294. There, the court rejected an argument that a default judgment should be set aside because no statement of damages had been served, reasoning: "Defendant also attacks the judgment under section 425.11, contending that plaintiff was required to serve it with a statement of damages and failed to do so. Section 425.11 applies to an action for personal injuries or wrongful death and was passed concurrently with the amendment to section 425.10 that prohibits stating the amount demanded in the complaint filed in such an action. Section 425.11 was enacted to satisfy the due process requirement that defendants be apprised of their exposure before a default may be taken. [Citation.] But here the complaint, which was not limited to personal injuries and did not claim wrongful death, expressly apprised defendant of the amount demanded. A statement of damages would have been superfluous and was not required under these circumstances." (*Id.* at p. 1302.) Likewise, because the complaint was not limited to personal injuries and appellant was apprised of the amount demanded, no statement of damages was required.

DISPOSITION

The judgment is affirmed. Soleimanzadeh is entitled to recover his costs on appeal.

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_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ